IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7132 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

YATIN & LALO BHARATBHAI DUDHREJIYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7132 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MS. MITA PANCHAL Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 10/09/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed

against him by the Police Commissioner, Rajkot City on 7.4.2003 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short).

The grounds served upon the petitioner and placed on record reveals that the detaining authority has relied upon nine offences registered against the petitioner, one on 1.4.2003 and other on 5.4.2003 under sec. 379 of IPC for the theft of Hero Honda Motorcycle. The detaining authority has also taken into consideration two in-camera statements of the witnesses recorded by the proposing authority on 5.4.2003 and verified by the detaining authority on 6.4.2003 as mentioned in the grounds of detention. From the above material, the order impugned in this petition came to be passed as above said.

Ld. advocate Mr. MR Prajapati for the petitioner and Ms. Mita Panchal ld. AGP were heard at length. Ld. AGP places on record the affidavit-in-reply which is taken into consideration.

Out of various contentions raised on behalf of the petitioner and controverted by ld. AGP, it appears that out of many grounds, this petition can be disposed of on the ground that whether the detaining authority applied its mind properly when the order of detention came to be passed even as per the averments made in the grounds, in all the nine offences the petitioner was in judicial custody. The detaining authority came to the conclusion that the petitioner was likely to move bail application in all cases and was likely to be released by the court on bail. It was also averred in the grounds that if the petitioner is released on bail, he was likely to continue his anti-social activities. Ld. AGP has placed reliance on two decisions of the Apex Court; one in the matter of Meena Jayendra Thakur vs. Union of India and ors., as reported in (1999)8 SCC p. 177 and other in the matter of Ahamed Nassar vs. State of Tamil Nadu & Ors., as reported in (1999)8 SCC P. 473. While the ld. advocate for the petitioner has relied upon the decision of the Supreme Court in the matter of Amritlal and other vs. Union Government, through Secretary, Ministry of Finance and others, as reported in AIR 2000 SC 3675. My attention was also drawn to para-13 of the affidavit in reply filed by the detaining authority wherein detaining authority has dealt with the averments made in the petition. Having regard to the rival contentions, the principle of law is that when detaining authority comes to the conclusion that the detenu was

likely to be released on bail, there must be cogent material before the officer passing the order of detention. This inference must be drawn from the available material on record and must not ipse dixit of the officer passing the order of detention. When this material is not available, passing of the order is liable to be quashed. In both the above cases of the Apex Court which have been relied upon by the ld. AGP, on facts, the Apex Court came to the conclusion that those were not the case of no material, while the present case is scrutinised, it is clearly transpired that in fact there was no material at all before the detaining authority to come to the conclusion that the petitioner was likely to be released on bail. The order impugned, therefore, is required to be quashed and set aside on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 7.4.2003 by the Police Commissioner, Rajkot City under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. VORA, J.)

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